

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION**

In Re:)	
)	Chapter 11
SEARS HOLDINGS CORPORATION, et al.,)	
)	Case No. 18-23538 (RDD)
Debtors.)	
)	(Jointly Administered)
)	

THE TAUBMAN LANDLORDS' CURE CLAIM OBJECTION

The Taubman Landlords¹, by their counsel, Andrew S. Conway, for their cure claim objection, state as follows:

1. This is a contested matter, pursuant to Bankruptcy Rules 6006(b) and 9014.
2. Jurisdiction is based upon 28 U.S.C. §1334.
3. This is a core proceeding within the meaning of 28 U.S.C. §157(b).
4. On October 15, 2018 ("Filing Date"), the debtors filed their petition for relief under Chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code").

Cure Claims Objection

5. Bankruptcy Code Section 365(b)(2), governs the financial obligations of a debtor which wishes to assume a lease. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee;

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

¹The Taubman Landlords are the owners of certain regional retail shopping centers which includes: Fairfax Company of Virginia L.L.C., commonly known as Fair Oaks Mall located in Fairfax, Virginia; TVO Mall Owner LLC, commonly known as Twelve Oaks Mall located in Novi, Michigan; and Sunvalley Shopping Center LLC, commonly known as Sunvalley Shopping Center located in Concord, California.

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(Emphasis added).

6. The Taubman Landlords assert that the requirements of Section 365(b)(1)(B) include compensation to the landlord for sums incurred for attorneys' fees in connection with the bankruptcy case. *See, In re: F&N Acquisition Corp.*, 152 B.R. 304 (W.D.Wash. 1993); *In re: Westworld Community Healthcare, Inc.*, 95 B.R. 730 (C.D.Cal. 1989); *In re: Ryan's Subs, Inc.*, 25 Bankr. Ct. Dec. 649 (W.D.Md. 1994); and *In re: Child World, Inc.*, 161 B.R. 349 (S.D.N.Y. 1993) (Section 365(b)(1)(B) allows for recovery of attorneys' fees if based upon the language of the lease). The Taubman Landlords' leases have language in Articles XI and XIX which requires the reimbursement of attorneys' fees in connection with proceedings of this kind.

7. The Taubman Landlords reserves its right to amend and supplement this objection (the "Cure Claim Objection"), as additional amounts become due under the Lease Agreements with Debtors.

8. The cure amounts necessary to assume the Taubman Leases with the debtors through January 25, 2019, not including pecuniary losses incurred by the landlords, additional amounts due after January 25, 2019, and year-end adjustments for common area maintenance, taxes, and percentage rent is as follows:

Center	Debtors' Store No.	<u>Debtors' Proposed Cure Amount</u>	<u>Taubman's Cure Amount</u>	<u>Taubman's Attorneys' Fees</u>	<u>Taubman's 2017 Estimated CAM and Taxes</u>	<u>Taubman's 2018 Estimated CAM and Taxes</u>	<u>Taubman's 2019 Estimated CAM and Taxes</u>	<u>Taubman's Total Cure Amount</u>
Fair Oaks Mall	1814	\$44,217.77	\$18,466.61	\$3,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$36,466.61
Sunvalley ¹	1368-1-A	\$0.00	\$78,644.00	\$3,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$96,644.00
Twelve Oaks Mall	1760	\$0.00	\$0.00	\$3,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$18,000.00

¹The Taubman Landlords' cure amount for Sunvalley includes lien amounts asserted by Maloney & Bell. Claimant reserves the right to amend this and other amounts.

Copies of the Account Status Report and Invoice showing amounts due and owing are attached hereto as "Exhibit 1."

Wherefore, the Taubman Landlords request that the debtors be required to cure all outstanding defaults and that the cure amounts be established in the amounts set forth above, and that the Taubman Landlords be awarded their costs and attorneys' fees incurred in connection with this objection.

Dated: January 25, 2019

/s/ Andrew S. Conway
Andrew S. Conway, Esq.
200 East Long Lake Road, Suite 300
Bloomfield Hills, MI 48304
(248) 258-7427
aconway@taubman.com
Counsel for The Taubman Landlords

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CERTIFICATE OF SERVICE

Mona K. Jabr, being first duly sworn, deposes and says that she is an employee of The Taubman Company, and that on January 25, 2019, she served a copy of the **Taubman Landlords' Cure Claim Objection** and this **Certificate of Service** via Notice of Electronic Filing and/or by enclosing the papers in sealed envelopes with first-class postage fully prepaid and depositing the envelopes and their contents in the United States mail, addressed as follows:

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Ray C. Schrock, P.C.
Jacqueline Marcus
Garrett A. Fail
Sunny Singh

OFFICE OF UNITED STATES
TRUSTEE
U.S. Federal Office Building
201 Varick Street
Room 1006
New York, New York 10014
Telephone: (212) 510-0500

/s/ Mona K. Jabr

Mona K. Jabr

Subscribed and sworn to before me,
on this 25th day of January, 2019.

/s/ Deann Lynett Iloncai

Deann Lynett Iloncai, Notary Public
Lapeer County, Michigan
My Commission Expires: 03/23/2021
Acting in Oakland County, Michigan

Exhibit 1

R5503420B

TAUB005

A/R Details with Aging

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Company: 01211 Fair Oaks

Aging Date 10/23/2018 As-Of Date 10/23/2018

Date	Bill Code	Description	Open Amount	Current	31 - 60	61 - 90	91 - 120	Over 120
Sears								
Greg Gorski			00000982 1002	Store # 1814		LTD-S 7/30/2030		Status: Current
greg.gorski@searshc.com			(847) 2865123	Fax: (847) 2862805	Security	.00	Last Payment: 15,208.72 10/3/2018	Group: Reciprocal Easement
7/22/2003	CEXM	Lighting cr Jan. 03- July 03	362.48-					362.48-
5/12/2004	CEXM	LIGHTING CREDIT REIMBURSEMENT	610.66-					610.66-
10/17/2005	MADJ	EXM - Ck# 348079 CAM Adj??	819.68-					819.68-
5/15/2006	CXAJ	Recovery Reconciliation 12/05	583.00-					583.00-
5/10/2007	CCAJ	Recovery Reconciliation 12/06	317.42					317.42
12/10/2008	CXAJ	2002 CAM Adj - Revised	957.00-					957.00-
12/10/2008	CXAJ	2003 CAM Adj - Revised	965.00-					965.00-
7/21/2009	CXAJ	Lighting Reimbursement 1/09-7/	1,448.41-					1,448.41-
6/24/2011	MADJ	CAJ - 2010 CAM Adj Pymt	2.92-					2.92-
6/24/2011	MADJ	CAJ - 2010 CAM Adj Pymt	2,791.00-					2,791.00-
5/13/2016	CCAJ	Recovery Reconciliation 12/15	4,408.85					4,408.85
12/8/2016	CCAJ	2014 Revised CAJ Adjustment	262.63-					262.63-
10/10/2017	CCAJ	CAM Recovery Reconciliati_2016	1,273.07-					1,273.07-
1/1/2018	CMAC	Major - CAM 1/18	1,399.95					1,399.95
2/1/2018	CMAC	Major - CAM 2/18	1,399.95					1,399.95
3/1/2018	CMAC	Major - CAM 3/18	1,399.95					1,399.95
4/1/2018	CMAC	Major - CAM 4/18	1,399.95					1,399.95
5/1/2018	CMAC	Major - CAM 5/18	1,399.95					1,399.95
6/1/2018	CMAC	Major - CAM 6/18	15,857.08					15,857.08
6/2/2018	CCAJ	CAM Recovery Reconciliati_2017	959.36					959.36
7/1/2018	CMAC	Major - CAM 7/18	648.36				648.36	
8/1/2018	CMAC	Major - CAM 8/18	648.36			648.36		
9/1/2018	CMAC	Major - CAM 9/18	648.36		648.36			
10/1/2018	CMAC	Major - CAM	648.36	648.36				
Sears			21,060.05	648.36	648.36	648.36	648.36	18,466.61
Company: 01211 Fair Oaks USD			21,060.05	648.36	648.36	648.36	648.36	18,466.61

Exhibit 1



November 21, 2018

SEARS Holdings
Attn: Mark P. Conway
Jorge Belda

By e-mail and First-Class Mail

Ref: SEARS Post Petition work Store # 6831

SMART Ticket Number: 9223227

Funding Number: 1800101

Description: Install New Sewage Lift System

Facility Type: Sears/SAC (Sears, Kmart, TGI...)

Store#: 1368/6831 **District:** 161

City, State: Concord, CA

Consultant: NA

Sears/Kmart Project Manager: Jorge Belda

Gentlemen;

I have been contacted regarding the completion of the above job. Considering Sears October 15, 2018 Bankruptcy filing date, the remaining work listed in the below SOV falls into "Post Petition" work and therefore must be authorized.

Please find below a revised schedule of values showing the remaining work at this location.

SOV	Value	10/15 status	Balance to finish
engineering and design	\$ 5,000.00	100%	\$ 5,000.00
sewage pump system	\$ 25,545.00	0%	\$ 25,545.00
pipng	\$ 12,500.00	30%	\$ 8,750.00
Excavation/concrete work	\$ 7,745.00	30%	\$ 5,421.50
Electrical and alarm	\$ 8,345.00	50%	\$ 4,172.50
Permits and fees	\$ 1,800.00	100%	\$ -
Miscellaneous	\$ 1,975.00	0%	\$ 1,975.00
Camera sewer pipes	\$ 4,772.00	100%	\$ -
Install additional pump	\$ 5,600.00	0%	\$ 5,600.00
Electrical for N pump	\$ 2,156.00	30%	\$ 1,509.20
Concrete removal and replac	\$ 1,610.00	30%	\$ 1,127.00
Autodrains	\$ 1,596.00	0%	\$ 1,596.00
Retainage.			\$ (2,294.76)
			\$ 2,294.78
	\$ 78,644.00		\$ 20,653.02
			\$ 57,990.98

9821 Business Park Drive, Suite 160B Sacramento, CA. 95827

Ph:916 687-8779

Lic. #982286

Exhibit 1

Once proper approval is given for us to proceed with this post-petition work, we will timely proceed.

Additionally, please note that it is our intention to file a Mechanics Lien at this property for all un-paid funds due.

You may contact me at 916 687 8779 and or my e-mail at kuhs@maloneyandbell.com.

Sincerely,
Maloney and Bell General Construction, Inc.

Steven C. Kuhs
President

cc: Sunvalley Shopping Center LLC
Taubman Land Associates LLC